

HOUSE No. 342

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia relative to further regulating collective bargaining impasses involving public employees. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT REGULATING COLLECTIVE BARGAINING IMPASSES INVOLVING PUBLIC EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 150E of the General Laws is hereby
2 amended by striking out Section 9, as appearing in Section 1 of
3 Chapter 347 of the Acts of 1977, and inserting in place thereof the
4 following section:—

5 Section 9. After a reasonable period of negotiation over the
6 terms of a collective bargaining agreement, either party or the par-
7 ties acting jointly may petition the board for a determination of
8 the existence of an impasse. Upon receipt of such petition, the
9 board shall commence an investigation forthwith to determine if
10 the parties have negotiated for a reasonable period of time and if
11 an impasse exists, within ten days of the receipt of such petition,
12 the board shall notify the parties of the results of its investigation.
13 Failure to notify the parties within ten days shall be taken to mean
14 that an impasse exists.

15 Within five days after such determination, the board shall
16 appoint a mediator to assist the parties in the resolution of the
17 impasse. In the alternative, the parties may agree upon a person to
18 serve as a mediator and shall notify the board of such agreement
19 and choice of mediator. Any such mediator shall be empowered to
20 order the parties to provide specific representatives authorized to
21 enter into a collective bargaining agreement to be present at meet-
22 ings held for said purpose of resolving the impasse and negoti-
23 ating such an agreement.

24 After a reasonable period of mediation, not to exceed twenty
25 days from the date of appointment, said mediator shall issue to the
26 board a report indicating the results of his services in resolving
27 the impasse.

28 If the impasse continues after the conclusion of mediation,
29 either party or the parties acting jointly may petition the board to
30 initiate fact finding proceedings. Upon receipt of such petition, the
31 board shall appoint a fact finder, representative of the public, from
32 a list of qualified persons maintained by the board. In the alterna-
33 tive, the parties may agree upon a person to serve as fact finder
34 and shall notify the board of such agreement and choice of fact
35 finder. No person shall be named as a fact finder who has repre-
36 sented an employer or employee organization within the pro-
37 ceeding twelve months. The fact finder shall be subject to the
38 rules of the board and shall, in addition to powers delegated to
39 him by the board, have the power to mediate and to recommenda-
40 tions for the resolution of the impasse. The fact finder shall
41 transmit his findings and any recommendations for the resolution
42 of the impasse to the board and to both within thirty days after the
43 date of his appointment. If the impasse remains unresolved ten
44 days after the transmittal of such findings and recommendations,
45 the board shall make them public.

46 The parties by their own agreement may mutually waive the
47 fact finding provisions contained herein and may petition the
48 board for arbitration pursuant to Sections 4 or 4B of Chapter one
49 thousand and seventy-eight of the Acts of nineteen hundred and
50 seventy-three. Said waiver shall not constitute a bar to any arbitra-
51 tion award.

52 Any arbitration award in a proceeding voluntarily agreed to by
53 the parties to resolve an impasse shall be binding on the parties
54 and on the appropriate legislative body and effective and enforce-
55 able pursuant to the provisions of Chapter one hundred and fifty
56 C, provided that said arbitration proceeding has been authorized
57 by the appropriate legislative body or in the case of school
58 employees, by the appropriate school committee.

59 If the impasse continues after the publication of the fact find-
60 er's report, the issues in dispute shall be returned to the parties for
61 further bargaining.

62 Any time limitations prescribed in this section may be extended
63 by mutual agreement of the parties and the board.

1 SECTION 2. Chapter 1078 of the Acts of 1973 is hereby
2 amended by inserting after Section 4A, as added by Section 1 of
3 Chapter 730 of the Acts of 1977, the following section:—

4 Section 4B. If an employee organization is engaged in an
5 impasse with a public employer which has continued for thirty
6 days after the publication of the fact finder's report pursuant to
7 Section nine of Chapter one hundred and fifty E of the General
8 Laws or, if the parties have mutually waived the fact finding pro-
9 visions contained in said Section nine of said Chapter one hundred
10 and fifty E said employee organization shall petition the board to
11 make an investigation.

12 If, after an investigation, the board determines that:

13 1. The requirements of Section nine of said Chapter one hun-
14 dred and fifty E have been complied with in good faith by the
15 employee organization;

16 2. Thirty days have passed since the date of publication of the
17 fact finding report pursuant to said section nine;

18 3. The proceedings for the prevention of any prohibited prac-
19 tices have been exhausted provided that any such complaints have
20 been filed with the commission prior to the date of the fact find-
21 er's report; and

22 4. An impasse exists, the board shall notify the employer and
23 the employee organization that the issues in dispute shall be
24 resolved by a three-member arbitration panel or when the parties
25 mutually agree, the board shall select a single arbitrator in lieu of
26 the arbitration panel.

27 Said panel shall be comprised of three arbitrators, one selected
28 by the employer, one selected by the employee organization and a
29 third impartial arbitrator, who shall act as chairman of the panel
30 who shall be selected by the two previously selected arbitrators. In
31 the event that their party fails to select an arbitrator, or for any
32 reason there is a delay in the naming of an arbitrator, or if the
33 arbitrators fail to select a third arbitrator within the time pre-
34 scribed by the board, the board shall appoint the arbitrator or arbi-
35 trators necessary to complete the panel which shall act with the
36 same force and effect as if the panel had been selected without
37 intervention of the board,

38 In the event that the parties mutually elect to use a single arbi-
39 trator, selected by the board to appoint said arbitrator, who shall
40 act with the same force and effect as if a three-member panel had
41 been selected by the parties.

42 The single arbitrator or the arbitration panel acting through its
43 chairman, shall conduct a hearing within ten days after the date of
44 appointment of its chairman, at a place within the locality of the
45 municipality involved where feasible. The chairman shall give at
46 least seven days notice in writing to each of the other arbitrators.
47 The chairman or single arbitrator shall give like notice to the rep-
48 resentatives of the municipal employer and employee organiza-
49 tions of the time and place of such hearing.

50 The single arbitrator or chairman shall preside over the hearing
51 and shall take testimony. Upon application and for good cause
52 shown, a person, labor organization, or government unit having
53 substantial interest therein may be granted leave to intervene by
54 the arbitration panel. The proceedings shall be informal. Any oral
55 or documentary evidence and other data deemed relevant by the
56 arbitration panel or single arbitrator may be received into evi-
57 dence. The arbitrators shall have the power to administer oaths
58 and to require by subpoena the attendance and testimony of wit-
59 nesses, the production of books, records and other evidence
60 relative to or pertinent to the issues presented to them for determi-
61 nation. If any person refuses to obey a subpoena or refuses to be
62 sworn or to testify, or if any witness, party or attorney is guilty of
63 any contempt while in attendance at any hearing, the arbitration
64 panel or single arbitrator may, or the district attorney if requested,
65 shall invoke the aid of the superior court within the jurisdiction in
66 which the hearing is being held for the court to issue an appro-
67 priate order.

68 A record of the proceedings shall be kept, and the chairman or
69 single arbitrator shall arrange for the necessary recording service.
70 Transcripts may be ordered at the expense of the party ordering
71 them, but the transcripts shall not be necessary for an award by
72 the panel or single arbitrator. The hearing may be continued at the
73 discretion of the panel or single arbitrator and shall be concluded
74 within forty days from the time of commencement. At the conclu-
75 sion of the hearing, each party shall submit a written statement
76 containing its last and best offer for each of the issues in dispute

77 to the panel or single arbitrator, who shall take said statements
78 under advisement. Within ten days after the conclusion of the
79 hearing, a majority of the panel, or the single arbitrator, shall
80 select as the last and best arbitration award either the employer's
81 written statement of its last and best offer, the employee organiza-
82 tion's written statement of its last and best offer, or the recommen-
83 dations of the fact finder, if a fact finding report and
84 recommendations have been issued, and immediately shall give
85 written notice of the selection to the parties. The selection shall be
86 final and binding upon the parties and upon the appropriate leg-
87 islative body. Within thirty calendar days of the last and best offer
88 selection and award, the impartial chairperson of the arbitration
89 panel, or the single arbitrator, shall issue a written opinion inclu-
90 sive of an analysis of all statutory facts applicable to the proceed-
91 ings.

92 At any time before the rendering of an award, the chairman of
93 the arbitration panel or single arbitrator, if he is of the opinion that
94 it would be useful or beneficial to do so, may remand the dispute
95 to the parties for further collective bargaining. If the dispute is
96 remanded for further collective bargaining, the time provisions of
97 this act shall be extended for a period equal to that of the remand.

98 In the event that the representatives of the parties mutually
99 resolve each of the issues in dispute and agree to be bound accord-
100 ingly, said representatives may, at any time prior to the final deci-
101 sions by the panel, or single arbitrator, request that the arbitration
102 proceedings be terminated, the panel, acting through its chairman
103 or single arbitrator, shall terminate the proceedings.

104 The factors among others, to be given right by the arbitration
105 panel or single arbitrator in arriving at the decision shall include:

106 1. The financial ability of the municipality to meet costs. Such
107 factors which shall be taken into consideration shall include but
108 not be limited to (a) the city, town or district's state reimburse-
109 ments and assessments; (b) the city, town or district's long and
110 short term bonded indebtedness; (c) the city, town or district's
111 estimated share in the metropolitan district commission deficit;
112 (d) the city, town or district's estimated share in the Massachusetts
113 Bay Transportation Authority's deficit; and (e) consideration of
114 the average per capita property tax burden, average annual income
115 of members of the community, the effect any accord by the panel

116 or single arbitrator might have on the respective property tax rates
117 on the city or town.

118 2. The interests and welfare of the public.

119 3. The hazards of employment, physical, educational, and
120 mental qualifications, job training and skills involved.

121 4. A comparison of wages, hours and conditions of employment
122 of the employees involved in the arbitration proceedings with the
123 wages, hours and conditions of employment of other employees
124 performing similar services and with other employees generally in
125 public and private employment in comparable communities.

126 5. The decisions and recommendations of the fact finder, if any.

127 6. The average consumer prices for goods and services com-
128 monly known as the cost of living.

129 7. The overall compensation presently received by the
130 employees including direct wages and fringe benefits.

131 8. Changes in any of the foregoing circumstances while the
132 arbitration proceedings were pending.

133 9. Such other factors, not confined to the foregoing, which are
134 normally or traditionally taken into consideration in the determi-
135 nation of wages, hours and conditions of employment through
136 voluntary collective bargaining, mediation, fact finding, arbitra-
137 tion or otherwise between parties, in the public service or in pri-
138 vate employment.

139 10. The stipulation of the parties.

140 Any determination or decision of the arbitration panel or single
141 arbitrator if supported by material and substantive evidence on the
142 whole record shall be binding upon the parties and may be
143 enforced at the instance of either party, the single arbitrator or the
144 arbitration panel in the superior court in equity, provided however,
145 that the scope of arbitration in police matters shall be limited to
146 wages, hours, and conditions of employment and shall not include
147 the following matters of inherent managerial policy: the right to
148 appoint, promote, assign and transfer employees; and provided,
149 further, that the scope of arbitration in firefighter matters shall not
150 include the right to appoint and promote employees. Assignments
151 shall not be within the scope; provided, however, that the subject
152 matters of initial station assignment upon appointment or promo-
153 tion shall be within the scope of arbitration. The subject matter of
154 transfer shall not be within the scope of arbitration, provided,

155 however, that the subject matters of relationship of seniority to
156 transfers and disciplinary and punitive transfers shall be within the
157 scope of arbitration. Notwithstanding any other provisions of this
158 chapter to the contrary, no municipal employer shall be required
159 to negotiate over subjects of minimum manning of shift coverage,
160 with an employee organization representing municipal police offi-
161 cers and firefighters.

162 The commencement of a new municipal finance year prior to
163 the final awards by the arbitration panel shall not be deemed to
164 render a dispute moot, or to otherwise impair the jurisdiction or
165 authority of the arbitration panel or its award. Any award of the
166 arbitration panel may be retroactive to the expiration date of the
167 last contract.

168 If a municipal employer, or an employee organization willfully
169 disobeys a lawful order of enforcement pursuant to this section, or
170 willfully encourages or offers resistance to such order whether by
171 strike or otherwise, the punishment for each day that such con-
172 tempt continues may be a fine for each day to be determined at the
173 discretion of said court.

174 Each of the parties shall provide compensation for the arbitrator
175 which he has selected pursuant to this section. The remaining
176 costs of arbitration proceedings under this section shall be divided
177 equally between the parties. Compensation for the arbitrators shall
178 be in accordance with a schedule of payment established by the
179 American Arbitration Association.